



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R06-OAR-2016-0611; FRL-10015-44-Region 6]**

#### **Air Plan Approval; Texas; Interstate Visibility Transport**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to disapprove elements of two State Implementation Plan (SIP) submissions from the State of Texas for the 2012 PM<sub>2.5</sub> National Ambient Air Quality Standard (NAAQS) and the 2015 Ozone NAAQS. These submittals address how the existing SIP provides for implementation, maintenance, and enforcement of the 2012 PM<sub>2.5</sub> and 2015 Ozone NAAQS (infrastructure SIP or i-SIP). The i-SIP requirements are to ensure that the Texas SIP is adequate to meet the state's responsibilities under the CAA for these NAAQS. Specifically, this proposed disapproval addresses the interstate visibility transport requirements of the i-SIP for the 2012 PM<sub>2.5</sub> and 2015 Ozone NAAQS under CAA section 110(a)(2)(D)(i)(II). In addition to this proposed disapproval, however, we are proposing to find that the requirements of those i-SIP elements are met through the Federal Implementation Plans (FIPs) in place for the Texas Regional Haze program, and no further federal action is required.

**DATES:** Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2016-0611, at <https://www.regulations.gov> or via email to [huser.jennifer@epa.gov](mailto:huser.jennifer@epa.gov). Follow the online

instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Jennifer Huser, 214-665-7347, [huser.jennifer@epa.gov](mailto:huser.jennifer@epa.gov). For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

<https://www.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov). While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (e.g., CBI).

**FOR FURTHER INFORMATION CONTACT:** Jennifer Huser, EPA Region 6 Office, Regional Haze and SO<sub>2</sub> Section, 214-665-7347, [huser.jennifer@epa.gov](mailto:huser.jennifer@epa.gov). Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID-19. We encourage the public to submit comments via <https://www.regulations.gov>, as there will be a delay in processing mail and no courier or hand deliveries will be accepted. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us,” and “our” means the EPA.

## **I. Background**

Whenever a new or revised National Ambient Air Quality Standard (NAAQS) is promulgated, the Clean Air Act (CAA) requires states to submit a plan for the implementation, maintenance, and enforcement of the standard, commonly referred to as infrastructure requirements. One of the elements of an infrastructure SIP is found within section 110(a)(2)(D)(i)(II), often referred to as prong 4 or visibility transport. Prong 4 requires states to demonstrate that their SIP has adequate provisions in place to prohibit emissions from any source within a state from interfering with visibility protection measures of other states. In EPA’s 2013 guidance for states regarding i-SIPs,<sup>1</sup> EPA discussed its interpretation of prong 4 and its relationship to the Regional Haze program under CAA sections 169A and 169B. EPA suggested two options states may have to demonstrate that the requirements of prong 4 are met. One way in which prong 4 may be satisfied for any relevant NAAQS is through confirmation in its infrastructure SIP submission that it has an approved regional haze SIP that fully meets the requirements of 40 CFR 51.308 or 51.309. Alternatively, states may submit a demonstration in its infrastructure SIP submission that emissions within its jurisdiction do not interfere with other states’ plans to protect visibility. The demonstration must show that the state has sufficient measures that have been approved into its SIP that prevent emissions within its jurisdiction from interfering with the visibility protection plans of other states.

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<sup>1</sup> Stephen D. Page, Director, Office of Air Quality Planning and Standards. “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Section 110(a)(1) and 110(a)(2).” Memorandum to EPA Air Division Directors, Regions 1 through 10, September 13, 2013 (hereinafter “2013 I-SIP Guidance”).

### **A. Texas' Infrastructure SIP Submittals for 2012 PM<sub>2.5</sub> and 2015 Ozone NAAQS**

EPA has regulated particulate matter (PM) since 1971, when we published the first NAAQS for PM (36 FR 8186 (April 30, 1971)). Most recently, by notice dated January 15, 2013, following a periodic review of the NAAQS for fine particulate matter (PM<sub>2.5</sub>), EPA revised the primary annual PM<sub>2.5</sub> NAAQS to 12.0 µg/m<sup>3</sup> and retained the secondary PM<sub>2.5</sub> annual standard of 15 µg/m<sup>3</sup> as well as the 24-hour PM<sub>2.5</sub> primary and secondary standards of 35 µg/m<sup>3</sup> (2012 PM<sub>2.5</sub> NAAQS).<sup>2</sup> The primary NAAQS is designed to protect human health, and the secondary NAAQS is designed to protect the public welfare. On December 1, 2015, the Chairman of the Texas Commission on Environmental Quality (TCEQ) submitted a SIP revision to address certain 2012 PM<sub>2.5</sub> NAAQS infrastructure SIP elements. On June 5, 2018, we approved all elements of the this i-SIP submission, except for the interstate visibility transport sub-element under CAA section 110(a)(2)(D)(i)(II) upon which we took no action.<sup>3</sup>

EPA has regulated ozone since 1971, when we published the first NAAQS for Photochemical Oxidants (36 FR 8186 (April 30, 1971)). Most recently, following a periodic review of the 2008 NAAQS for ozone, EPA revised the primary and secondary ozone NAAQS to 0.070 ppm.<sup>4</sup> In 2015, the EPA promulgated a revision to the ozone NAAQS lowering the level of both the primary and secondary standards to 0.070 parts per million (80 FR 65292 (October 2015)). On August 17, 2018, the Chairman of the TCEQ submitted a SIP revision to meet certain 2015 ozone NAAQS infrastructure requirements. On September 23, 2019, we approved certain

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<sup>2</sup> 78 FR 3085 (Jan. 15, 2013).

<sup>3</sup> 83 FR 25920.

<sup>4</sup> 82 FR 65291 (Oct. 26, 2015). Additional information on the history of the NAAQS for ozone is available at <https://www.epa.gov/ozone-pollution/table-historical-ozone-national-ambient-air-quality-standards-naaqs>.

elements of the 2015 ozone i-SIP submission, but did not act on the interstate visibility transport sub-element under CAA section 110(a)(2)(D)(i)(II).<sup>5</sup>

## **B. Regional Haze and Visibility Transport in Texas**

On March 31, 2009, Texas submitted a regional haze SIP (the 2009 Regional Haze SIP) to the EPA that included reliance on Texas' participation in trading programs under the Clean Air Interstate Rule (CAIR) as an alternative to BART for sulfur dioxide (SO<sub>2</sub>) and nitrogen oxide (NO<sub>x</sub>) emissions from EGUs.<sup>6</sup> This reliance was consistent with the EPA's regulations at the time that Texas developed its 2009 Regional Haze SIP.<sup>7</sup> However, at the time that Texas submitted this SIP to the EPA, the D.C. Circuit had remanded CAIR (without vacatur).<sup>8</sup> The court left CAIR and our CAIR FIPs in place in order to "temporarily preserve the environmental values covered by CAIR" until we could, by rulemaking, replace CAIR consistent with the court's opinion. The EPA promulgated the Cross-State Air Pollution Rule (CSAPR) to replace CAIR in 2011<sup>9</sup> and revised it several times in 2011 and 2012.<sup>10</sup> CSAPR established FIP requirements for sources in a number of states, including Texas, to address the states' interstate transport obligations under CAA section 110(a)(2)(D)(i)(I). CSAPR addresses interstate transport of fine particulate matter and ozone by requiring affected EGUs in these states to participate in one or more of the CSAPR trading programs, which establish emissions budgets that apply to electric generating units' (EGUs') collective annual emissions of SO<sub>2</sub> and NO<sub>x</sub> (to

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<sup>5</sup> See 84 FR 49663 (September 23, 2019).

<sup>6</sup> CAIR required certain states, including Texas, to reduce emissions of SO<sub>2</sub> and NO<sub>x</sub> that significantly contribute to downwind nonattainment of the 1997 NAAQS for fine particulate matter and ozone. See 70 FR 25152 (May 12, 2005).

<sup>7</sup> See 70 FR 39104 (July 6, 2005).

<sup>8</sup> See *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), *as modified*, 550 F.3d 1176 (D.C. Cir. 2008).

<sup>9</sup> 76 FR 48207 (Aug. 8, 2011).

<sup>10</sup> CSAPR was amended three times in 2011 and 2012 to add five states to the seasonal NO<sub>x</sub> program and to adjust certain state budgets. 76 FR 80760 (Dec. 27, 2011); 77 FR 10324 (Feb. 21, 2012); 77 FR 34830 (June 12, 2012).

address PM<sub>2.5</sub> transport), as well as EGUs' emissions of NO<sub>x</sub> during ozone season (to address ozone transport).<sup>11</sup>

Following issuance of CSAPR, EPA determined that CSAPR would achieve greater reasonable progress towards improving visibility than would source-specific BART in CSAPR states (a determination often referred to as "CSAPR Better-than-BART").<sup>12</sup> In the same action, we revised the Regional Haze Rule to allow states whose sources participate in the CSAPR trading programs to rely on such participation in lieu of requiring BART-eligible EGUs in the state to install BART controls as to the relevant pollutant.

In the same action that EPA determined that states could rely on CSAPR to address the BART requirements for EGUs, EPA issued a limited disapproval of a number of states' regional haze SIPs, including the 2009 Regional Haze SIP submittal from Texas, due to the states' reliance on CAIR, which had been replaced by CSAPR.<sup>13</sup> The EPA did not immediately promulgate a FIP to address those aspects of the 2009 Regional Haze SIP submittal subject to the limited disapproval in order to allow more time for the EPA to assess the remaining elements of the 2009 Texas SIP submittal.

In December 2014, we proposed an action to address the remaining regional haze obligations for Texas.<sup>14</sup> In that action, we proposed, among other things, to rely on our CSAPR FIP requiring Texas sources' participation in the CSAPR trading programs to satisfy the NO<sub>x</sub> and SO<sub>2</sub> BART requirements for Texas' BART-eligible EGUs; we also proposed to approve the portions of the 2009 Regional Haze SIP addressing PM BART requirements for the state's

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<sup>11</sup> The ozone season for CSAPR purposes is May 1 through September 30.

<sup>12</sup> 77 FR 33641 (June 7, 2012). This determination was upheld by the D.C. Circuit. *See Util. Air Regulatory Grp. v. EPA*, 885 F.3d 714 (D.C. Cir. 2018).

<sup>13</sup> 77 FR 33641.

<sup>14</sup> 79 FR 74818 (Dec. 16, 2014).

EGUs. Before that rule was finalized, however, the D.C. Circuit issued a decision on a number of challenges to CSAPR, denying most claims, but remanding the CSAPR SO<sub>2</sub> and/or seasonal NO<sub>x</sub> emissions budgets of several states to the EPA for reconsideration, including the Phase 2 SO<sub>2</sub> and seasonal NO<sub>x</sub> budgets for Texas.<sup>15</sup> Due to the uncertainty arising from the remand of Texas' CSAPR budgets, we did not finalize our December 2014 proposal to rely on CSAPR to satisfy the SO<sub>2</sub> and NO<sub>x</sub> BART requirements for Texas EGUs.<sup>16</sup> Additionally, because our proposed action on the PM BART provisions for EGUs was dependent on how SO<sub>2</sub> and NO<sub>x</sub> BART were satisfied, we did not take final action on the PM BART elements of the 2009 Texas' Regional Haze SIP.<sup>17</sup> In January 2016, we finalized action on the remaining aspects of the December 2014 proposal.<sup>18</sup> This final action disapproved, among other things, Texas' Reasonable Progress Goals for the Big Bend and Guadalupe Mountains Class I areas in Texas, Texas' reasonable progress analysis and Texas' long-term strategy. EPA promulgated a FIP establishing a new long-term strategy that consisted of SO<sub>2</sub> emission limits for 15 coal-fired EGUs at eight power plants. That rulemaking was judicially challenged, however, and in July 2016, the Fifth Circuit granted the petitioners' motion to stay the rule pending review.<sup>19</sup> On March 22, 2017, following the submittal of a request by the EPA for a voluntary remand of the parts of the rule under challenge, the Fifth Circuit Court of Appeals remanded the rule in its entirety.<sup>20</sup>

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<sup>15</sup> *EME Homer City Generation, L.P. v. EPA (EME Homer City II)*, 795 F.3d 118, 132 (D.C. Cir. 2015).

<sup>16</sup> See 81 FR 296, 301-02 (Jan. 5, 2016).

<sup>17</sup> *Id.*

<sup>18</sup> 81 FR 296 (Jan. 5, 2016).

<sup>19</sup> *Texas v. EPA*, 829 F.3d 405 (5th Cir. 2016).

<sup>20</sup> Order, *Texas v. EPA*, 16-60118 (5th Cir. Mar. 22, 2017).

On October 26, 2016, the EPA finalized an update to CSAPR to address the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS (CSAPR Update).<sup>21</sup> The EPA also responded to the D.C. Circuit's remand in *EME Homer City II* of certain CSAPR seasonal NO<sub>x</sub> budgets in that action. As to Texas, the EPA withdrew Texas' seasonal NO<sub>x</sub> budget finalized in CSAPR to address the 1997 ozone NAAQS. However, in that same action, the EPA promulgated a FIP with a revised seasonal NO<sub>x</sub> budget for Texas to address transport requirements under the 2008 ozone NAAQS.<sup>22</sup> Accordingly, Texas sources remain subject to CSAPR seasonal NO<sub>x</sub> requirements.

On November 10, 2016, in response to the D.C. Circuit's remand of Texas' CSAPR SO<sub>2</sub> budget, we proposed to withdraw the FIP provisions that required EGUs in Texas to participate in the CSAPR trading programs for annual emissions of SO<sub>2</sub> and NO<sub>x</sub>.<sup>23</sup> We also proposed to reaffirm the EPA's 2012 analytical demonstration that CSAPR provides greater reasonable progress than BART, despite changes in CSAPR's geographic scope to address the *EME Homer City II* remand, including removal of Texas' EGUs from the CSAPR trading program for SO<sub>2</sub> emissions. On September 29, 2017, we finalized the withdrawal of the FIP provisions for annual emissions of SO<sub>2</sub> and NO<sub>x</sub> for EGUs in Texas<sup>24</sup> and affirmed our proposed finding that the EPA's 2012 analytical demonstration remains valid and that participation in the CSAPR trading programs as they now exist meets the Regional Haze Rule's criteria for an alternative to BART. (We refer to this as the "2017 CSAPR Better-than-BART affirmation finding" throughout this

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<sup>21</sup> 81 FR 74504 (Oct. 26, 2016).

<sup>22</sup> *Id.* 74524-25.

<sup>23</sup> 81 FR 78954 (Nov. 10, 2016).

<sup>24</sup> 82 FR 45481 (Sept. 29, 2017). As explained above, Texas sources continue to be subject to the CSAPR Update FIP, under which they participate in a CSAPR trading program for ozone season NO<sub>x</sub>.



proposed rule.) As discussed in Section I.D below, certain environmental organizations filed a petition for reconsideration of this finding in November 2017.

On October 17, 2017, we finalized our January 2017 proposed determination that Texas' participation in CSAPR's trading program for ozone-season NO<sub>x</sub> qualifies as an alternative to source-specific NO<sub>x</sub> BART. We determined that the SO<sub>2</sub> BART requirements for all BART-eligible coal-fired units and a number of BART-eligible gas- or gas/fuel oil-fired units are satisfied by a BART alternative for SO<sub>2</sub>—specifically, a new intrastate trading program that we established addressing emissions of SO<sub>2</sub> from certain EGUs in Texas. The remaining BART-eligible EGUs not covered by the SO<sub>2</sub> BART alternative were previously determined to be not subject to BART based on screening methods using model plants and CALPUFF<sup>25</sup> modeling as described in our proposed rule and BART Screening technical support document (TSD).<sup>26</sup> Finally, because both NO<sub>x</sub> and SO<sub>2</sub> were now being addressed by a BART alternative, we approved the 2009 Regional Haze SIP's determination, based on a pollutant-specific screening analysis, that Texas' EGUs are not subject to BART for PM. With respect to interstate visibility transport obligations, we determined that the BART alternative to address SO<sub>2</sub> and Texas sources' participation in CSAPR's trading program for ozone-season NO<sub>x</sub> to address NO<sub>x</sub> BART at Texas' EGUs fully addresses Texas' obligations for six NAAQS.

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<sup>25</sup> CALPUFF (California Puff Model) is a multi-layer, multi-species non-steady-state puff dispersion modeling system that simulates the effects of time- and space-varying meteorological conditions on pollutant transport, transformation, and removal. CALPUFF is intended for use in assessing pollutant impacts at distances greater than 50 kilometers to several hundreds of kilometers. It includes algorithms for calculating visibility effects from long range transport of pollutants and their impacts on Federal Class I areas. EPA previously approved the use of the CALPUFF model in BART related analyses. *See* Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations; Final Rule; 70 FR 39104 (July 6, 2005). For instructions on how to download the appropriate model code and documentation that are available from Exponent (Model Developer/Owner) at no cost for download, see EPA's website:

<https://www.epa.gov/scram/air-quality-dispersion-modeling-preferred-and-recommended-models#calpuff>.

<sup>26</sup> See document at docket identification number EPA-R06-OAR-0611-0005.

In June 2020, we affirmed our finding that Texas' participation in CSAPR to satisfy NO<sub>x</sub> BART and our SO<sub>2</sub> intrastate trading program, as amended, fully address Texas' interstate visibility transport obligations for the following six NAAQS: (1) 1997 8-hour ozone; (2) 1997 PM<sub>2.5</sub> (annual and 24 hour); (3) 2006 PM<sub>2.5</sub> (24-hour); (4) 2008 8-hour ozone; (5) 2010 1-hour NO<sub>2</sub>; and (6) 2010 1-hour SO<sub>2</sub>.<sup>27</sup> We determined in the October 2017 FIP that the regional haze measures in place for Texas are adequate to ensure that emissions from the State do not interfere with measures to protect visibility in nearby states, because the emission reductions are consistent with the level of emissions reductions relied upon by other states during interstate consultation under 40 CFR 51.308(d)(3)(i)-(iii) and when setting their reasonable progress goals.<sup>28</sup> As discussed in our August 2018 affirmation proposal, the 2009 Texas Regional Haze SIP relied on participation in CAIR to meet SO<sub>2</sub> and NO<sub>x</sub> BART requirements for Texas EGUs. Under CAIR, Texas EGU sources were projected to emit approximately 350,000 tons of SO<sub>2</sub> annually.<sup>29</sup> These are the 2018 EGU emission projections used by CENRAP for Texas that other states relied on in their regional haze SIPs for the first planning period.<sup>30</sup> While CAIR is no longer in operation, and therefore cannot be relied upon to satisfy BART requirements, the emissions projections based on CAIR used in interstate consultation remain valid as benchmarks

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<sup>27</sup> See final rule at 85 FR 49170, at 49187 (August 12, 2020); see also supplemental proposed rule at 84 FR 61850 (November 14, 2019) and affirmation proposed rule at 83 FR 43586 (August 27, 2018).

<sup>28</sup> See 2009 Texas Regional Haze SIP, section 4.3 titled "Consultations On Class I Areas In Other States." The submittal can be found at [www.regulations.gov](http://www.regulations.gov), Docket ID EPA-R06-OAR-2016-0611, Document ID EPA-R06-OAR-2016-0611-0002.

<sup>29</sup> See section 10 of the 2009 Texas Regional Haze SIP. Table 10-7 shows that under CAIR, the 2018 emission from Texas EGUs were projected to be approximately 350,000 tons SO<sub>2</sub>. The SIP submittal can be found in [www.regulations.gov](http://www.regulations.gov), Docket ID EPA-R06-OAR-2016-0611, Document ID EPA-R06-OAR-2016-0611-0002.

<sup>30</sup> To develop its 2009 Regional Haze SIP, TCEQ worked through its regional planning organization, the Central Regional Air Planning Association (CENRAP), to develop strategies to address regional haze, which at that time were based on emissions reductions from CAIR. To help states in establishing reasonable progress goals for improving visibility in Class I areas, the CENRAP modeled future visibility conditions based on the mutually agreed emissions reductions from each state. The CENRAP states then relied on this modeling in setting their respective reasonable progress goals.

for assessing states' impacts on other states' Class I areas. As we explained in our June 2020 final affirmation of the Texas BART alternative FIP for SO<sub>2</sub>, annual SO<sub>2</sub> emissions for sources covered by the Texas SO<sub>2</sub> Trading Program will be constrained by the annual budgets and an assurance level<sup>31</sup> of 255,083 tons. Including an estimated 35,000 tons per year of emissions from units not covered by the Texas SO<sub>2</sub> Trading Program yields 290,083 tons of SO<sub>2</sub>, which is well below the 350,000-ton emissions projection for 2018 for Texas sources under CAIR or the 317,100-ton emissions level assumed for Texas sources under CSAPR participation in the BART alternative sensitivity analysis utilized for the 2012 CSAPR Better-than-BART determination. Additionally, the October 2017 FIP relies on CSAPR for ozone season NO<sub>x</sub> as an alternative to EGU BART for NO<sub>x</sub>. The ozone season NO<sub>x</sub> emission reductions achieved by CSAPR exceed the emission reductions that would have been realized from Texas EGUs under CAIR and that other states relied upon during interstate consultation for the first planning period.<sup>32</sup> Because the revisions to the Texas SO<sub>2</sub> Trading Program ensure emission reductions consistent with and below the emission levels relied upon by other states during interstate consultation, we determined that the BART alternative for SO<sub>2</sub> in the October 2017 FIP, as amended by the June 2020 affirmation, as well as Texas' EGUs' continuing participation in the CSAPR Update for ozone season NO<sub>x</sub>, result in emission reductions adequate to satisfy the requirements of CAA

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<sup>31</sup> An assurance level is the total level of annual emissions above which units in the program would be penalized with a higher allowance surrender ratio (i.e., a three-to-one rate) than the one-to-one ratio that applies to emissions below the assurance level.

<sup>32</sup> Under CAIR, Texas had an annual 2009 CAIR Phase 1 budget of 181,017 tons of NO<sub>x</sub> and an annual 2015 CAIR Phase 2 budget of 150,845 tons of NO<sub>x</sub>. See Section 11, Table 11-15 of the 2009 Texas Regional Haze SIP. The SIP submittal can be found at [www.regulations.gov](http://www.regulations.gov), Docket ID EPA-R06-OAR-2016-0611, document ID EPA-R06-OAR-2016-0611-0002. The 2018 EGU emission projections for NO<sub>x</sub> used by CENRAP for Texas, which other states potentially impacted by emissions from Texas sources agreed upon during interstate consultation and relied on in their regional haze SIPs, were approximately 160,000 tons. In contrast, under the CSAPR ozone season NO<sub>x</sub> trading program, Texas' 2017 NO<sub>x</sub> ozone season budget is 52,301 tons of NO<sub>x</sub>. See 81 FR 74504, 74508 (Oct. 26, 2016). In 2018, Texas reported to CAMD, for all sources in Texas, approximately 107,000 tons of NO<sub>x</sub> emissions, and approximately 96,000 tons in 2019, well below the 160,000-ton emissions projection for 2018 assumed for Texas sources under CAIR and used in interstate consultation.

section 110(a)(2)(D)(i)(II) with respect to interstate visibility transport for the six identified NAAQS.

## **II. Texas Infrastructure SIP Submittals**

On December 1, 2015, TCEQ submitted a SIP revision to address the infrastructure and transport requirements for the 2012 PM<sub>2.5</sub> NAAQS. In its evaluation, TCEQ asserted that its March 19, 2009 regional haze SIP met all of the requirements for approval.

On August 17, 2018, TCEQ submitted a SIP revision to address the CAA section 110(a)(1) and 110(a)(2) infrastructure and transport requirements for the 2015 ozone NAAQS. In its evaluation, TCEQ acknowledged that it does not have a SIP-approved regional haze program but asserted that EPA's October 17, 2017 FIP to address best available retrofit technology (BART) requirements for Texas EGUs sufficiently meets the requirements for visibility transport. In that October 17, 2017 action, EPA included a disapproval of Texas' interstate visibility transport SIP submittals for the 1997 eight-hour ozone, 1997 PM<sub>2.5</sub> (annual and 24-hour), 2006 PM<sub>2.5</sub> (24-hour), 2008 eight-hour ozone, 2010 one-hour nitrogen dioxide, and 2010 one-hour SO<sub>2</sub> NAAQS (82 FR 48324). However, EPA also made a finding that the BART alternatives adopted in the FIP meet the interstate visibility transport requirements for these NAAQS under CAA section 110(a)(2)(D)(i)(II).

Texas relied on the following points to support its conclusion that Texas meets the visibility transport provision for the 2015 ozone NAAQS: 1) EPA's finding that the October 2017 BART FIP meets the visibility transport provision for these other NAAQS; 2) the modeling analysis in the State's interstate transport SIP revision (as to "prongs 1 and 2" under section 110(a)(2)(D)(i)(I)) purportedly demonstrating that Texas does not significantly contribute to nonattainment or maintenance in another state for the 2015 ozone NAAQS; 3) the fact that the

EPA has not established a separate visibility standard for ozone; and 4) Texas' inclusion in the Cross-State Air Pollution Rule (CSAPR) Update ozone season NO<sub>x</sub> trading program.

### **III. The EPA's Evaluation**

Our 2013 infrastructure SIP guidance addresses the requirements for prong 4 and lays out two ways in which a state's infrastructure SIP submittal may satisfy these requirements.<sup>33</sup> One way is through a state's confirmation in its infrastructure SIP submittal that it has a fully approved regional haze SIP in place. As previously discussed, EPA promulgated a limited disapproval of the 2009 Texas Regional Haze SIP in 2012 because the visibility improvement plan relied on CAIR emission reductions to satisfy BART requirements for EGUs for SO<sub>2</sub> and NO<sub>x</sub> emissions.<sup>34</sup> Texas has not submitted a SIP revision to address this deficiency and remove reliance on CAIR for Regional Haze. The 2009 Texas Regional Haze SIP cannot be relied upon to meet its interstate visibility transport obligations for the 2012 PM and the 2015 ozone NAAQS.

In the absence of a fully approved Regional Haze SIP, the second method provided by the guidance to meet these requirements is a demonstration that emissions within a state's jurisdiction do not interfere with other states' plans to protect visibility. EPA interprets prong 4 to be pollutant-specific such that the state need only address the potential for interference with visibility protection caused by the pollutant (including precursors) to which the new or revised NAAQS applies.<sup>35</sup> According to the guidance, such a demonstration for the first planning period should establish or identify the measures in the approved SIP that limit visibility-impairing pollutants and ensure that the resulting reductions conform with any mutually agreed emission

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<sup>33</sup> See 2013 I-SIP Guidance at 32-35.

<sup>34</sup> 77 FR 33641.

<sup>35</sup> See 2013 I-SIP Guidance at 33.

reductions under the relevant regional haze regional planning organization (RPO) process.<sup>36</sup> As explained below, the TCEQ did not make such a demonstration in their infrastructure SIPs.

#### **A. Analysis of Texas' 2015 Prong 4 Submittal for the 2012 PM<sub>2.5</sub> NAAQS**

The 2015 i-SIP submittal for the 2012 PM<sub>2.5</sub> NAAQS relied on Texas' 2009 Regional Haze SIP submittal. As explained above, the prong 4 requirements are pollutant specific. The portions of Texas' 2009 Regional Haze SIP that address PM BART have been approved, but portions of the SIP that address PM and PM precursor emissions have not been approved and thus cannot be relied upon to satisfy the prong 4 requirements. Some PM emissions are emitted directly from sources, but PM can also form in the atmosphere as a result of complex reactions of other pollutants such as SO<sub>2</sub> and NO<sub>x</sub>, which are visibility impairing pollutants themselves and are required to be addressed under regional haze. The 2015 i-SIP submittal does not provide any additional information to demonstrate that the measures in the SIP are sufficient to prohibit emissions from sources within Texas from interfering with measures that have been developed by other states to protect visibility. EPA cannot approve the interstate visibility transport portion of this i-SIP submittal without additional analysis that demonstrates that there are SIP-approved measures that prevent emissions within its jurisdiction from interfering with the visibility protection plans of other states. We therefore propose to disapprove the interstate visibility transport portion of the 2015 Texas i-SIP submittal for the 2012 PM<sub>2.5</sub> NAAQS.

#### **B. Analysis of Texas' 2018 Prong 4 Submittal for the 2015 Ozone NAAQS**

In Texas's 2018 i-SIP submittal for the 2015 Ozone NAAQS, TCEQ acknowledges the limited disapproval of its 2009 Regional Haze SIP submittal but explains that EPA's October 17,

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<sup>36</sup> See 2013 I-SIP Guidance at 34. See also 76 FR 22036 (April 20, 2011) (containing EPA's approval of the visibility requirement of 110(a)(2)(D)(i)(II) based on a demonstration by Colorado that did not rely on the Colorado Regional Haze SIP).

2017 FIP to address BART requirements for Texas EGUs sufficiently meets the requirements for interstate visibility transport for the 2015 ozone NAAQS. However, the BART-alternative emission limitations in the FIP are not part of the approved *SIP* and thus cannot be relied upon by the State to address visibility transport requirements. Infrastructure SIPs are intended to be a means by which both states and the EPA can ensure that the state has sufficient measures in their SIP to meet the requirements in CAA section 110(a) for newly promulgated NAAQS. The Act requires that the *state* submit implementation plans that “contain” the listed requirements under section 110(a)(2)(D). As such, states cannot rely upon measures in FIPs to meet these requirements.<sup>37</sup>

Texas points to its 2015 ozone NAAQS i-SIP submittal that purports to find that Texas emissions do not significantly contribute to nonattainment or interfere with maintenance in another state under section 110(a)(2)(D)(i)(I). The analysis in that SIP submittal focuses on the potential impact of ozone-precursor emissions at certain ozone monitor locations in other states as related to the attainment and maintenance of the ozone NAAQS and does not provide an analysis of *visibility* impacts at Class I areas due to emissions of ozone precursors as visibility pollutants.<sup>38</sup> This basis for approval is inadequate.

Texas stated that the EPA has not established a separate visibility transport standard for ozone because ozone does not directly impair visibility or substantially produce or contribute to the production of the secondary air contaminants that cause visibility impairment or regional haze. The visibility transport requirement found in CAA section 110(a)(2)(D)(i)(I) applies to all

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<sup>37</sup> See also *id.* at 34 (“A number of air agencies do not have fully approved regional haze SIPs in place and instead have FIPs in place, which cannot be relied upon to satisfy prong 4.”).

<sup>38</sup> See *id.* at 33 (“The EPA interprets [prong 4] to be pollutant-specific, such that the infrastructure SIP submission need only address the potential for interference with protection of visibility caused by the pollutant (including precursors) to which the new or revised NAAQS applies.”)

pollutants (including precursors) for which EPA has promulgated a NAAQS. As such, Texas is required to demonstrate to EPA that it has approved measures in its SIPs that ensure that ozone-precursor emissions within its jurisdiction do not interfere with other states' visibility protection plans. While it is true that ozone itself does not directly impair visibility or contribute to the production of secondary air contaminants that cause visibility impairment, ozone precursors (NO<sub>x</sub> and in some cases volatile organic compounds (VOCs)) do contribute to visibility impairment.

Texas also points to the fact that they are included in the CSAPR Update for ozone season NO<sub>x</sub>.<sup>39</sup> However, as described above, this is currently implemented as a FIP in Texas, both as to interstate ozone transport (for the 2008 ozone NAAQS) under section 110(a)(2)(D)(i)(I) and as a BART alternative. Texas has not used its SIP planning authority to submit a SIP revision to establish reliance on this CSAPR program to address regional haze requirements. Therefore, because the Texas Regional Haze SIP is not fully approved and Texas has not provided a demonstration that shows that its SIP contains measures that are sufficient to prevent emissions within its jurisdiction from interfering with the visibility protection measures of other states, we propose to disapprove the 2018 i-SIP submittal addressing interstate visibility transport for the 2015 Ozone NAAQS.

### **C. EPA's Proposed Finding that Prong 4 Obligations are Satisfied**

In October 2017, EPA promulgated a BART FIP, as amended and affirmed in June 2020. In that FIP, EPA has established emission limitations under the Texas SO<sub>2</sub> Trading Program – including the assurance provisions. As explained in section I. B. of this proposed rule, these emission limitations that were established in the FIP result in SO<sub>2</sub> emission levels that are lower

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<sup>39</sup> 81 FR 74504 (October 26, 2016).



than the levels that were projected for Texas during the Regional Haze consultation process. Thus, the Texas SO<sub>2</sub> emission levels achieved by the FIP's emission limitations<sup>40</sup> are lower than the levels that states relied on in developing their Regional Haze SIPs. Additionally, this FIP relies on CSAPR as an alternative to EGU BART for NO<sub>x</sub>, which exceeds the emissions reductions relied upon by other states during consultation. Consistent with our previous action (detailed above) to disapprove Texas' interstate visibility transport obligations for the following six NAAQS: (1) 1997 8-hour ozone; (2) 1997 PM<sub>2.5</sub> (annual and 24 hour); (3) 2006 PM<sub>2.5</sub> (24-hour); (4) 2008 8-hour ozone; (5) 2010 1-hour NO<sub>2</sub>; and (6) 2010 1-hour SO<sub>2</sub>, and finding that the FIP addresses these requirements, we continue to find that the existing FIP is adequate to ensure that emissions from Texas do not interfere with measures to protect visibility in nearby states with respect to the 2012 PM<sub>2.5</sub> NAAQS and the 2015 Ozone NAAQS.

Texas' obligations under prong 4 are being addressed through the October 2017 BART FIP, as amended and affirmed in June 2020 for the first planning period. This ensures that emissions from sources within Texas are not interfering with measures required to be included in other air agencies' plans to protect visibility. Under EPA's 2013 guidance, this is sufficient to satisfy prong 4 requirements for the first planning period. *See* Guidance at 33. Thus, there are no additional practical consequences from this disapproval for the state, the sources within its jurisdiction, or the EPA. *See* Guidance at 34-35. EPA finds its prong 4 obligations for the 2012 PM<sub>2.5</sub> and the 2015 ozone NAAQS are satisfied.

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<sup>40</sup> The Act defines an emissions limitation as a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under Chapter 85 of Title 42. Trading programs like the ones in the FIPs that fulfill Texas' regional haze requirements fall within the Act's definition of emissions limitations.

#### **IV. Proposed Action**

We are proposing to disapprove the interstate visibility transport elements of two SIP submissions from the State of Texas: one for the 2012 PM<sub>2.5</sub> NAAQS and the other for 2015 Ozone NAAQS. We are simultaneously exercising our authority under section 110(c) of the Act, and we are proposing to find that the prong 4 requirements that were intended to be addressed by those infrastructure SIPs are met through the BART-alternative FIP already in place for the Texas Regional Haze program, and no further action is required.

#### **V. Statutory and Executive Order Reviews**

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget for review.

*B. Paperwork Reduction Act (PRA)*

This proposed action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

*C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action merely proposes to disapprove a SIP submission as not meeting the CAA.

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175. This action does not apply on any Indian reservation land, any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian country. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it merely proposes to disapprove a SIP submission as not meeting the CAA.

*H. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

This rulemaking does not involve technical standards.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This action merely proposes to disapprove a SIP submission as not meeting the CAA.

**List of Subjects in 40 CFR Part 52**

Air pollution control, Environmental protection, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Visibility transport.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: October 9, 2020.

**David Gray,**

*Acting Regional Administrator, Region 6.*

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